



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2020

Ms. Maria Huynh  
Counsel for the Town of New Hope  
James W. Wilson & Associates, P.L.L.C.  
103 West Main Street  
Allen, Texas 75013

OR2020-26478

Dear Ms. Huynh:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 850236.

The Town of New Hope (the "town"), which you represent, received two requests from the same requestor for closing memoranda for specified bond issues. The town claims the requested information does not consist of public information subject to the Act. We have considered the submitted arguments.

Initially, the town contends the requested information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as

(a) [i]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act can also encompass information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

The town contends the requested information is not subject to the Act because the information is maintained by the New Hope Cultural Education Facilities Finance Corporation (the "corporation"). The town explains the information was created and is maintained by the corporation, which the town claims is not a governmental body subject to the Act. *See* Gov't Code § 552.003(1)(A) (defining "governmental body"). In support of its arguments, the town submitted copies of the city's Resolution 070\1030-R, authorizing and approving the creation of the corporation; the Articles of Incorporation of the corporation, and the corporation's Bylaws. Upon review of these materials, we find the requested information is held for the town by the corporation, the town has a right of access to the information at issue in the hands of the corporation, and the information pertains to the transaction of the town's official business. *See id.* § 552.002(a)(2)(B), (a-1). Therefore, we conclude the requested information is subject to the Act and the town must release it unless the town demonstrates the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

Next, we must address the town's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply

that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The town received the requests for information on July 7, 2020, and on August 11, 2020. As of this date, the town has not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude the town failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because the town has not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If the town believes the information may not lawfully be released, the town must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 850236

c: Requestor